WA 247/2005
BEFORE
THE HON'BLE MR JUSTICE D. BISWAS, CHIEF JUSTICE (ACTING)
THE HON'BLE MR. JUSTICE HRISHIKESH ROY

JUDGMENT AND ORDER(Oral)
By D.Biswas, CJ (Actg.)

This appeal is directed against the judgment dated 26.3.2004 passed by the learned Single Judge in Writ Petition (C) No.5470 of 1999 dismissing the writ petition filed by the appellant challenging his removal from service on completion of a disciplinary proceeding initiated on the following two charges :-

Article of Charge - I

An act of gross indiscipline, negligence and dereliction of duty on the part of No.911070035 HC/GD BODH RAJ JAMWAL of CISF Unit Oil, Duliajan in that while he was deployed for A Shift duty on 20/3/99 at HMS Balijan as Guard Commander he in active connivance with Shri Mahindra Singh, Technician Grade-II OIL (India) Ltd. tried to smuggle out 5 numbers of Cement bags in OIL (India) Ltd. Gypsy No.1310 at about 1210 hrs on that day, carried by Shri Mahindra Singh, Sl. No.917939, Technician Grade-II of OIL (India) Ltd. without any valid challan.

This act amounts to gross indiscipline, negligence and dereliction of duty. Hence the charge.

Article of Charge-II

An act of gross indiscipline, dereliction of duty and breach of trust on the part of No.911070035 HC/GD BODH RAJ JAMWAL of CISF Unit OIL Duliajan in that on 24/3/99 while he was deployed for B Shift duty at HMS Location front side Morcha he allowed a truck loaded with Cement bags to go outside the location without any valid authority by giving false information to Constable S. Hembram who had carried out checking of the above mentioned vehicle stating that he has got the challan and he had already entered the required information into the 'IN & OUT MATERIAL REGISTER' with malafide intention. The above mentioned was later recovered from nearby HMS drilling location on 29.3.99.

This act amounts to serious misconduct, dereliction of duty and breach of trust. Hence, the charge.

2. In response to the notice, the appellant submitted his written statement denying the allegations brought against him. The authority upon consideration of the reply, decided to proceed with the enquiry, and appointed an Inquiry Officer to go into the charges. In the enquiry, the evidence of as many as 14 witnesses have been examined by the authority in support of the charges with due opportunity to the appellant to cross-examine and controvert the same. On conclusion of the proceedings, the Inquiry Officer held that both the charges framed against the appellant have been proved. The appointing authority after consideration of the report at length, imposed the penalty of removal from service.

3. The appellant at the first instance preferred an appeal before the department authority. Simultaneously, he also approached this Court filing the writ petition challenging the order of his removal from service.

4. Mr. G.C. Phukan, learned counsel for the appellant submitted, with reference to the materials available on record, that there is no evidence at all to indict the appellant for having committed the offence alleged in the memorandum of charges. According to Mr. Phukan, the authority has failed to bring home the charges by adducing any evidence. Mr. Phukan, however, did not challenge the departmental proceeding for any procedural irregularities or violation of the principles of natural justice.

5. Mr. DC Chakraborty, learned counsel for the Union submitted that the evidence of the Constables Shri U.C. Das and Shri S. Hembram would show that the appellant while on shift duty along with others had allowed a truck loaded with 25 bags of cement to go out of the MHS Balijan and OIL (India) Ltd. installations without any authority from the higher officers and that he had also faci

litated an attempt by a contractor and other employees of the Oil India to take out 5 bags of cement on two different dates. A casual look on the evidence of the above named two witnesses would show that the appellant had made a false statement to the constable Shri S.Hembram that the truck loaded with 25 bags had a challan issued by the competent authority and it was duly entered in the entry register of the Unit which was subsequently found to be false statement. It was on this statement made by the appellant, the witness Constable Shri S. Hembram allowed the truck to cross over the gate. From the evidence of Constable Shri U.C. Das, we find that he had objected to the carrying of 5 bags of cement loaded in a gypsy for want of valid authority. The said gypsy had to be stopped by him at gun point near the gate. It was for his intervention the smuggling of 5 bags of cement did not materialize. The evidence of other witnesses also point accusing fingers towards the appellant.

6. This Court in exercise of its powers under Article 226 is required only to examine the decision making process. If a disciplinary proceeding has been concluded in violation of the procedural safeguard or mandate of law or in negation of the principles of natural justice, only then the power of review could be invoked to set at right the decision challenged. The Court is certainly not authorized to weigh the evidence and adequacy thereof in order to determine whether the charges have been proved beyond all reasonable doubt. If there is some amount of evidence, the Court should refuse to further delve deep into the matter. In the case at hand, there being no controversy with regard to the procedure followed by the Inquiry Officer and, for the evidence adduced by the authority, we think it is a case which does not call for our interference with the decision of the authority in imposing the penalty of removal from service.

7. Mr. Phukan, learned counsel argued that the penalty imposed by the authority is disproportionate to the offence committed and, therefore, the Court may like to direct the respondent authority to consider and impose a lesser penalty. But, the law in this behalf is now well settled. In case of harsh and disproportionate penalty, a Court in exercise of its power under Article 226 may refer the matter back to the authority for reconsideration. But, the circumstances of the case at hand is such that a guard on duty himself indulged in pilferage and siphoning. Considering this aspect alone, we are of the opinion that the penalty imposed in the instant case is in commensuration with the offence committed by the appellant. The learned Single Judge in a well reasoned judgment has rightly rejected the petition of the appellant warranting no interference by this Court.

8. In the result, the appeal is dismissed. No costs.